

**PLANNING AND ZONING COMMISSION
MINUTES
PUBLIC HEARING/GENERAL MEETING
JUNE 18, 2013**

Place: Room 119, Town Hall

TIME: 8:00 P.M.

PLANNING & ZONING COMMISSION MEMBERS ATTENDING:

Spain, Cameron, DiDonna, Cunningham, and Olvany (arrived at 9:55 P.M.)

STAFF ATTENDING: Ginsberg, Keating

RECORDER: Syat

Channel 79

Chairman Spain read the first agenda item:

PUBLIC HEARING

Modification of Business Site Plan #258, Kleban Day Street LLC., 1015 Boston Post Road.

Proposing to: eliminate the previously approved basement; establish Massage Envy in a portion of both the first and second floor of the building now under construction at 1015 Boston Post Road; include a retail tenant in another portion of the first floor; reduce the number of second floor apartments to two; modify the location of doors and windows; and perform related site development activities. The subject property is located on the northwest corner formed by the intersection of Day Street and Boston Post Road, and shares a parking lot with 13 Grove Street, and is shown on Assessor's Map #73 as Lots #15 & #16 in the CBD Zone.

Attorney Amy Zabetakis of Rucci Law Group was present on behalf of the applicant, Kleban Day Street. Also present were the franchise owners of Massage Envy. Ms. Zabetakis explained that in 2008 the Planning & Zoning Commission approved Business Site Plan #258. This included 2 new buildings with basements; retail use on the first floor, 3 apartments each are on the second floor of both buildings; and 12 parking spaces in between the 2 buildings. She said that there were no restrictions on the type of retail approved. This did not preclude a personal service use. Since that time, the right to construct and use the front building was purchased by Kleban Day Street. In November 2012, the Zoning & Building Permits were issued for the foundation and for this front building. In December 2012, Zoning Enforcement Officer Dave Keating refused to approve the tenant build-out for the Massage Envy use in the front building. That decision was appealed to court and is now pending.

Ms. Zabetakis emphasized that they are not seeking approval to construct the building. They are also not addressing the 13 Grove Street building, which is on the same property and is also now under construction. They are seeking to modify the previous site plan. The conditions of approval can be clarified going forward. She then distributed an 11" x 17" colored floor plan. She noted that all the windows will be open to the interior of the space and/or will have product retail displays and be well lit. Any changes in the tenants in the future would be required to come before the Planning & Zoning Commission for review and action. She explained that as part of this application, the landlord will offer valet parking from 12 noon to 3 P.M., Thursdays and Fridays. Those are shown to be the hours of greatest parking demand in this area. She explained that they can also valet parking because of the type of use, since it is mostly by appointment. Within six

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months from the time the building is fully occupied and twelve months thereafter, the parking will be analyzed as well.

Ms. Zabetakis said they could make adjustments such as shifting hours of the valet parking in response to such traffic and parking analysis. Mr. Spain asked whether the Commission could include conditions of approval regarding these studies. Ms. Zabetakis confirmed that that is possible; however, this would only be one tenant in downtown Darien with a parking problem that could be created by multiple tenants in downtown Darien. Mr. Spain noted that the Planning & Zoning Commission must assess the merits of the application. He believed that the Commission should not approve something that would create a parking problem. Mr. DiDonna said that he is not sure if the valet parking will work and asked what would happen down the road if it doesn't work. Ms. Zabetakis responded that it would be a discussion between the client and the staff but could be the Planning & Zoning Commission as well. Mr. DiDonna believed that it could be too much intensity of use here. Ms. Zabetakis said that they have an expert report that the valet parking will be sufficient in this case. Ms. Zabetakis also confirmed that Mr. Kleban has purchased Mechanic Street municipal parking passes for the employees of Massage Envy.

Mr. Ken Kleban explained that he purchased two properties in downtown Darien recently. He also owns property in Fairfield as well. He said that his track record speaks for itself. Ms. Eugenia Tzoannopolos and Dina Begetis were present as owners and operators of this site. They explained that Massage Envy is a national franchise that provides massages, facials and associated retail products for sale. Massage Envy has staggered appointment times and would be located within easy walking distance from the Darien train station. Ms. Cameron then asked about the average visit time for a Massage Envy patron. Ms. Tzoannopolos explained that 10% of the visits are considered dual service, which usually lasts about 2 hours. A majority of the visits, about 80%, are one-hour long visits, and about 10% of the visits are 90-minute visits.

Ms. Cameron asked if valet parking would be required of the patrons. Ms. Tzoannopolos responded that valet parking would be free and patrons would have the option of whether they wish to use it. Ms. Zabetakis mentioned that valet parking would be as an added value to the patrons. Mr. Spain asked whether there would be flexibility in the valet parking. Ms. Tzoannopolos said that the Stamford store has limited parking with 13 rooms and the usual franchise would have 15-17 rooms. They also have locations in Milford, Fairfield and Brookfield. Ms. Cameron asked how many of the visits consist of the dual service two-hour (10% of all visits). Ms. Tzoannopolos responded that in Stamford they have 1,700 service units in a month. She noted that they have extended hours.

Mr. Cunningham asked about the peak hours. Ms. Tzoannopolos responded that the peak hours are evenings and weekends, from 4 to 8 P.M. Ms. DiDonna summarized by noting that it is likely they would have about 400 +/- service units per week in the Darien location. Ms. Tzoannopolos responded that facials are usually one hour in time and are a growing part of the business. All locations are open 7 days per week. Mr. Spain noted that they can take 60 appointments per day approximately. Ms. Tzoannopolos confirmed they are open usually 9 A.M. to 10 P.M. which is a 13 hour long day. Mr. Spain noted that they could have 60 people with only 5 employees. Ms. Tzoannopolos responded that that would be accurate. She explained that they have been open about one and one-half years in Stamford. She explained that Fairfield now has 2,400 service units per month and that is after 6 years of being in service at that location. She noted that this location

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would have a 10 year lease. Mr. Spain confirmed that the Commission wants local businesses to be successful. Ms. Tzoannopolos noted that this business would be open 88 hours per week. Mr. Spain mentioned that when the Commission approved this project a few years ago they had traditional retail in mind and not a patron of the business staying possibly up to two hours long.

Ms. Cameron explained that she read through the 2008 Planning & Zoning Commission approval. Shoppers were referred to in that approval, not clients or patrons for a service. Ms. Tzoannopolos responded that Massage Envy does have some accessory retail sales.

Ms. Zabetakis distributed a copy of the 2008 Planning & Zoning Commission approval. She said the applicant is willing to add conditions to the approval. She noted that there are now misconceptions by the general public and that the goal here is to modify the existing 2008 approval. Mr. DiDonna noted that any changes in tenants must come back before the Planning & Zoning Commission. He asked whether the Planning & Zoning Commission will have the right to review that tenant. Ms. Zabetakis responded that they could do that. Mr. DiDonna asked whether the valet would continue for the new tenant. Ms. Zabetakis said that the Planning & Zoning Commission can approve tenant changes. If the Planning & Zoning Commission wishes to review that, that would be ok. There would be no reserved parking for the residential tenants. She said that this type of personal service business is a use permitted in the zone. The Planning & Zoning Commission can review whether the parking is sufficient with these conditions. She said that there are many personal service uses now in the CBD Zone in Darien. She said tonight they are seeking to modify the Site Plan and have provided an expert report.

Ms. Erica Jensen then spoke noting that she owns a clothing store at 1078 Boston Post Road. She believes that this is not a retail business and has concerns about the proposed tenant, and its effect on downtown Darien.

Attorney Robert F. Maslan, Jr. was present on behalf of 1019 Post Road Associates, 1021 Post Road Associates and Baywater Post Road Associates. He said that there are a number of problems with this request. Mr. Maslan explained that the parking study submitted with the original application was based upon text book retail, which does not include personal service. He said that the applicant is taking away one apartment which detracts from the project. He said that in this case we still do not have actual traffic or parking counts, it is bases solely upon representations by the applicant. Mr. Maslan said that his clients have commissioned Tighe & Bond Inc. to do a traffic and parking study, but do not have a report for tonight.

Mr. Maslan then noted that parking not within 500 feet of the site does not comply with the Regulations. He said that involves only one of the buildings on the site not both. He explained that the pending application for a wine bar will be heard next week. Mr. Maslan explained that the Planning & Zoning Commission must consider this application under Section 905 of the Darien Zoning Regulations. He explained that the wine bar is more intense than the retail use originally proposed and approved. A bar is more intense than a restaurant. A true parking study is needed for changes. He then referred to the Town Plan of Conservation and Development regarding parking. He said what is before the Commission this evening is half of the Site Plan. Mr. Maslan said that the Planning & Zoning Commission does not have enough data to satisfy the new use and nothing in this record is with regard to the proposed wine bar. Mr. Maslan then referred to Paragraph N of

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the 2008 Planning & Zoning Commission adopted resolution. He said that this property needs to be looked at comprehensively.

Mr. David Genovese, an adjacent property owner, said that he has engaged Tighe & Bond Inc. to look at the parking issues. He said that the Commission needs objective, empirical data to analyze. He explained that the original approval is critical. The submitted traffic analysis relied upon traditional retail as the first floor use. That is not what is proposed in the current request. Mr. Genovese confirmed that the Town needs more apartments downtown and Massage Envy moving into a part of the second floor would eliminate one of these apartments. Mr. Spain believes that the Commission should look at the totality of the proposal. The traffic study should look at an aggregation of the uses. Ms. Cameron asked whether making the property a condominium changes the original approval.

Mr. Reese Hutchison said that he is the manager of the 993 Boston Post Road property and also owns a condominium on Brook Street. He said that the Commission should ask the police to weigh in on the valet parking issue. He believes that this is a huge deviation from the original traffic and parking study and that the Commission must look at the back building proposed for this property as well. He believes that this proposed use does not meet the original traffic and parking demand and it will not work. Mr. Hutchison explained that the intensity is so much greater that what was approved, is not even close to the original approval. He believes that there would be a parking problem.

At about 9:50 P.M., Mr. Spain noted that in order to get to other agenda items, the public hearing would need to be continued. The Commission then continued the public hearing regarding this matter to June 25, 2013 at 8 P.M. in Room 206 of Darien Town Hall.

Mr. Spain then read the next agenda item:

Amendment of Subdivision Application #544-A(7), Jaime & Christina Vicencio, 19 Morley Lane ("North Lot"). Request to modify previously approved single-family residence to be constructed on the now-vacant lot. The subject property is located on the west side of Morley Lane, approximately 1,000 feet north of its intersection with Redcoat Pass, and is shown on Assessor's Map #63 as Lot #55A, in the R-1 Zone. ***PUBLIC HEARING WAS OPENED ON 5/28/2013 AND IMMEDIATELY CONTINUED TO JUNE 11, 2013 AND JUNE 18, 2013.***

Mr. Ginsberg explained that neither the applicant nor his representative are present this evening and he has been working closely with them on whether this application will need to go to the Planning & Zoning Commission; the Planning & Zoning Commission and Environmental Protection Commission; or would not need local review by land use boards at all. The owner was still weighing his options as of a day or two ago; therefore, Mr. Ginsberg recommended to the Commission that they continue the public hearing to June 25, 2013 to allow the owner and applicant to determine what their next step will be. The Commission then continued the public hearing on this matter to June 25, 2013 at 8 P.M. in Room 206 of Darien Town Hall.

At 9:55 P.M., Mr. Olvany joined the meeting and Mr. Spain then read the next agenda item:

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Special Permit Application #66-M, Darien YMCA, 2420 Boston Post Road. Proposing to modify previously approved hours of operation. The subject property is located on the south side of Boston Post Road, approximately 350 feet east of its intersection with Weed's Landing, and is shown on Assessor's Map #53 as Lot #60 in the R-1/2 Zone.

Attorney Robert Maslan represented the YMCA and introduced Patrick Morrissey, Executive Director, and David Genovese, from the Board of Directors. The YMCA proposed to extend the early morning hours of operation due to the opening of commercial competition. Attorney Maslan said that the YMCA Board sent letters of notification to neighbors and property owners on two occasions and did not get any negative responses. There was one email addressed to the Planning & Zoning Commission staff that supports the request for the early morning hours of operation.

Attorney Maslan reviewed his letter of April 3, 2013 in which he requested the hours of operation changed from 6 A.M. to 5 A.M. on weekdays and from 7:45 A.M. to 7 A.M. on Saturdays and from 12 noon to 8 A.M. on Sundays. He said that they will limit the use of the periphery of the parking lot so that the early morning attendees will not park close the neighboring property owners. The Y will use temporary barriers placed at night to prevent the early morning patrons from parking close to the neighbors. The barriers will be removed at 8 A.M.

Mr. DiDonna said that the hours of operations are part of a 1995 settlement of an appeal. The resolution of the litigation established the hours of operation and many other factors. Attorney Maslan said that limitations include the maximum membership and occupancy capacity as well as the hours of operation. He said that they have never reached the maximum membership or occupancy limitations. He said that other commercial facilities open earlier than the YMCA and that the YMCA members want the Y to open earlier so they can exercise earlier in the morning. He said that any changes to the stipulated judgment are not possible without the approval/agreement of the Planning & Zoning Commission. He said that the YMCA has been a good member of the Darien community and respects the concerns of the neighbors.

One property owner from across the street spoke in opposition to the early hours of operation. He said that he lives at 2474 Boston Post Road and that his house is directly across the street from the exit driveway. He said that commercial gyms are businesses and are located in business zones. He said that the YMCA is a Special Permit use in a residential area and that the early hours of operation would have a negative impact on the neighborhood. He said that the Commission should not ignore the interest of the neighbors for the interest of the YMCA members that do not live close to the YMCA. He said that the traffic, noise, lights and other impacts to a neighborhood would be generated by the very early hours of operation. He said that the swim team has a very limited number of users and they are the only ones that use the Y at the very early hours. He said that he moved there two years ago and has accepted the fact that the swim team uses the YMCA very early but does not want the general membership to have access to the YMCA so early.

David Genovese said that he is a volunteer on the YMCA Building Committee and said that one other neighbors has contacted the YMCA indicating that they are not satisfied with the landscaping along the Boston Post Road. He said that he and the neighbor are in the process of resolving that situation by adding more landscaping. He said that the neighbor that spoke in opposition is directly across the street from the open driveway that exits from the YMCA parking lot to the street and it is not possible to create any landscaping in that area that would screen the headlights.

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Attorney Maslan said that not all the member of the YMCA will use the YMCA so early in the morning and that the parking lot lights can be controlled and the location of parking can be controlled for the early morning hours. He said that people would generally stay at the YMCA for at least a 45 minute workout and thus would not be leaving the parking lot until about 5:45 A.M.

There were no other questions or comments. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Ms. Cameron, seconded by Mr. DiDonna and unanimously approved.

Mr. Spain then read the next agenda item:

Land Filling & Regrading Application #307, Tomas & Ana Maria Chadwick, 6 Sylvan Road.

Proposing to construct a circular driveway from the existing driveway to Sylvan Road; install a retention system for the new impervious areas, and perform related site development activities. The subject property is located on the south side of Sylvan Road, approximately 150 feet east of its intersection with Brookside Road, and is shown on Assessor's Map #11 as Lot #26 in the R-1 Zone.

Doug DiVesta, Professional Engineer, represented the property owners and explained that they propose to install a circular driveway to address the safety concerns and traffic issues. The existing driveway has very limited sight lines due to a rise in the street and it makes it very difficult to back from the driveway in to the street. He said that stormwater runoff from the expanded driveway area will be collected in catch basins and then routed to a stormwater detention system that will be installed. He said the new driveway is only 12 feet wide in order to limit the impervious surface. He noted that this regrading is necessary only for the residential use and does not involve any commercial business operations. He said that having the circular driveway will minimize the need for drivers to back out into the street, which is quite dangerous.

The Commission members discussed the proposed regrading plan. There were no comments from the public. The following motion was made: That the Planning & Zoning Commission close the public hearing regarding this matter and will render a decision at a future meeting. The motion was made by Mr. DiDonna , seconded by Ms. Cameron and unanimously approved.

Mr. Spain then read the next agenda item:

GENERAL MEETING

Modification of Coastal Site Plan Review #84-D, Flood Damage Prevention Application #74-D, Land Filling & Regrading Application #301, Richard & Wendy Hokin, 25 Shipway Road.

Modification to the previously approved plans to demolish the existing residence, construct a new single-family residence with associated filling and regrading, and perform related site development activities within regulated areas.

Mr. Ginsberg explained that the Hokin have requested a modification of previous approval to move the house about 30 feet. He said shifting the house still complies with the setback requirements and the Flood Damage Prevention Regulations.

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Doug DiVesta, Professional Engineer, prepared and submitted the revised Site Plan. Mac Patterson, Project Architect, said that two large native trees will be preserved by the relocation. Mr. DiVesta said that the proposed stormwater runoff will be directed into a management system for water quality purposes. Ms. Cameron suggested that an above ground rain garden would be a preferred method rather than having an underground stormwater treatment system that no one would be able to see and a problem would not be detectable. Mr. Spain said that one of the problems with rain gardens is that the maintenance work still needs to be done. Mr. DiVesta said that they can look into that if that is what the Commission wants.

The following motion was made: That the Planning & Zoning Commission approve the modifications of the Coastal Site Plan Review and Flood Damage Prevention and Land Filling & Regrading Applications to allow the house to be relocated in accordance with the submitted plans. The motion was made by Ms. Cameron, seconded by Mr. DiDonna and unanimously approved.

Mr. Spain then read the next agenda item:

Approval of Minutes

May 28, 2013 Public Hearing/ General Meeting

Commission members discussed changes to the May 28, 2013 minutes on pages 2, 4, and 8 to clarify and correct typographical errors. All members agreed. The following motion was made: That the Planning & Zoning Commission adopt the revised and corrected minutes. The motion was made by Mr. DiDonna, seconded by Ms. Cameron and unanimously approved.

Mr. Spain then read the next agenda item:

Deliberation ONLY on the following if the public hearing has been closed:

Special Permit Application #66-M, Darien YMCA, 2420 Boston Post Road. Proposing to modify previously approved hours of operation. The subject property is located on the south side of Boston Post Road, approximately 350 feet east of its intersection with Weed's Landing, and is shown on Assessor's Map #53 as Lot #60 in the R-1/2 Zone.

Commission members discussed the pending application and asked staff to draft a resolution for consideration at a future meeting. No action was taken.

Mr. Spain then read the next agenda item:

Land Filling & Regrading Application #307, Tomas & Ana Maria Chadwick, 6 Sylvan Road. Proposing to construct a circular driveway from the existing driveway to Sylvan Road; install a retention system for the new impervious areas, and perform related site development activities. The subject property is located on the south side of Sylvan Road, approximately 150 feet east of its intersection with Brookside Road, and is shown on Assessor's Map #11 as Lot #26 in the R-1 Zone.

Commission members discussed the pending application and asked staff to draft a resolution for consideration at a future meeting. No action was taken.

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Because this is a Special Meeting, the Commission cannot consider "Other Business". There being no further business, the following motion was made: That the Planning & Zoning Commission adjourn the meeting. The motion was made by Ms. Cameron, seconded by Mr. DiDonna and unanimously approved. The meeting was adjourned at 11 P.M.

Respectfully submitted,

Jeremy Ginsberg
Planning & Zoning Director

David J. Keating
Assistant Planning & Zoning Director

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